IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

-

WRIT PETITION NO : 9409 of 2004

Between:

Kurapati Suryachandra Rao S/o Sri Kurapati Satyam
r/o Moyyeru Village, Ganapavaram Mandal, West Godavari District.

..... PETITIONER

AND

1 Superintending Engineer (Irrigation), Godavari Western Division, Eluru,

West Godavari District.
2 Executive Engineer (Irrigation), Godavari Western Division, Nidadavolu, West Godavari District.
3 Divisional Engineer (Irrigation), Godavari Western Sub-Division, Tanuku, West Godavari District.
4 Executive Engineer, A.P.State Highways, Special Division, Jangareddygudem, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the fourth Respondent in fixing the additional pipelines of 2.22 dia-metres each to the Tallapalem Branch Canal under the Koderu - Nallazerla Road as being without jurisdiction and violative of the Principles of Natural Justice and the inaction of the Respondents 1 to 3 as failure to discharge their statutory duties and further direct the Respondents 1 to 4 not to fix any additional pipelines supplied by the rich landlords to the Tallapalem Branch Canal

under the Koderu - Nallazerla Road.

Counsel for the Petitioner: MR.M.V.DURGA PRASAD

Counsel for the Respondent No: GP FOR IRRIGATION & COMM AREA DEV.

The Court made the following:

ORDER:

The petitioner seeks to issue writ of mandamus declaring the action of the Executive Engineer, A.P.State Highways, 4th respondent herein, in fixing additional pipelines of 2.22 diameters each to the Tallapalem Branch Canal under Koderu-Nallazerla Road as without jurisdiction and violative of the principles of natural justice and direct respondents 1 to 3, who are irrigation authorities, for failure to discharge their statutory duties and also direct respondents 1 to 4 not to fix any additional pipelines supplied by the rich landlords.

The grievance of the petitioner is that he is the owner and cultivator in respect of the land admeasuring Ac.2.25 cents in Survey No.169/2A of Moyyeru village, Ganapavaram Mandal, West Godavari District. The land of the petitioner is situated under registered ayacut of Godavari Delta receiving irrigation water through Tallapalem Branch of Komarru Channel. The lands in Tallapalem and Pippara villages are situated in low level. The flow of water is very fast and a sluice of 1.15 diameter was constructed more than 100 years back beneath the Koderu-Nallazerla Road to supply water to the fields of Tallapalam and Pippara villages. While widening the road, the 4th respondent has proposed to lay an additional pipeline in which event more water will flow and the interests of cultivators whose lands are situated on the upper riparian lands will be affected. It is stated that whenever there is an increase in the size of the pipeline or if more

water released in any particular area, there is a procedure prescribed to be followed under A.P. Irrigation Utilization and Command Area Development Act, 1984 after giving reasonable opportunity to the affected cultivators.

On the other hand, the learned Government Pleader for Irrigation submits that the sluice road culvert was constructed more than 100 years back to facilitate water supplies to the down stream ayacut in Tallapallem and Pippara villages. The size of the vent way provided for the culvert was 0.91 Mts., x 1.90 Mts., with arch on top, but not 1.15 Mts. It is further stated that when the 4th respondent wanted to lay additional pipeline, respondents 1 to 3 have stopped the laying of additional pipelines and an inspection of the site was made on 16.6.2004 by the 2nd respondent pursuant to the report received by the Deputy Executive Engineer, Tanuku. After inspection permission was accorded for the construction of culvert at K.M.44/121 across Tallapalem Channel vide letter dated 18.6.2004 to the 4th respondent subject to condition that the screw gearing shuttering arrangements are to be provided to the additional pipe barrel now proposed to be laid for maintaining proper water regulation. It is also stated that the culvert construction should be taken under close supervision of the Irrigation Department and the approved hydraulic particulars should not be altered and the extension made by the 4th respondent for the left side barrel wall of the existing vent way at the entry and the right side extending barrel wall at the exit are to be dismantled and reconstructed as shown in the plan to provide fair entry of water into the culvert barrel. It is stated in the counter that the initial road width and the culvert vent way length was 4.11 meters, which constructed more than a centuary back. Later it was widened to 7 meters about 20 to 30 years back. It again proposed to be increased to 11.4 meters by proposing 2.2 meters on either side. The alignment of the existing vent way has almost come in perpendicular direction to the flow of canal and as a result the Tallapalem channel has to take a right angle turn for the water to pass through and due to which there shall be heavy loss of head which diminishes the flow of water

through the existing vent way. The quantity of water that would pass through the right angle curve shall be about 50% of its capacity. To supplement balance 50% only, one row of extra pipeline of 1.20 meters dia buried into ground by 0.29 meters depth is proposed to be provided with gated regulation arrangements to restrict any excess flow on the down stream side of the culvert so as to safeguard the upper riparian right on the northern side of the road. To be more cautious, it was proposed a model section for Tallapalem channel at about 30 to 50 meters down streamside of road culvert so as to regulate any excess flows on to down streamside.

In view of the specific admission and the categorical statement made in the counter by the 2nd respondent that there will not be any excess flow of water by reason of laying of additional pipelines and the exact water that has been let out to the concerned ryots earlier to the laying of additional pipelines will alone be let out. Therefore, sufficient precautions have been taken by the Irrigation Department for not releasing any more water than what they were getting. But the additional pipe was laid only to ensure for release of the same and exact water, but not any more excess flow on the down stream. In view of the aforesaid statement made in the counter affidavit, I am of the opinion that the petitioner or any ryots, whose lands are situated on the upstream, have been affected or going to be affected in any manner.

The learned counsel for the petitioner submits that the laying of additional pipelines is illegal and contrary to the procedure prescribed under the Act. I am not inclined to accept the said contention in view of the alignment of the existing vent way, which has almost come in perpendicular direction. The need has arisen to lay additional pipes to maintain the same flow of water to the downstream.

Therefore, I am of the view that the writ petition can be disposed of by directing respondents 1 to 3 to ensure that except without following the procedure prescribed under the Act, no excess water shall be permitted from the existing and additional pipelines that is

going to be laid and ensure that no excess water is flown on the down stream from the existing and additional pipelines.

The writ petition is, accordingly, disposed of. No order as to costs.

_____

(V.ESWARAIAH, J.)

15.3.2005

kpr

To

1 Superintending Engineer (Irrigation), Godavari Western Division, Eluru,

West Godavari District.
2 Executive Engineer (Irrigation), Godavari Western Division, Nidadavolu, West Godavari District.
3 Divisional Engineer (Irrigation), Godavari Western Sub-Division, Tanuku, West Godavari District.
4 Executive Engineer, A.P.State Highways, Special Division, Jangareddygudem, West Godavari District.

5. 2 copies to the G.P. for Irrigation & C.A.D., High Court Buildings,

Hyderabad (O.U.T.)

6. 2 C.D. copies